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Washington, D.C. 20554

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In the Matter of	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

COMMENTS OF AD HOC
TELECOMMUNICATIONS USERS COMMITTEE

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Summary

If properly drafted, the Commission's interconnection rules will facilitate the development of effective competition in the local exchange and access service markets. Such competition will not come easy, but if it emerges it will do more to improve consumer welfare than even the most effective economic regulation To maximize the odds of such competition developing, the Commission must: (1) enact comprehensive, national interconnection rules; (2) unbundle network elements in a manner that optimizes availability, flexibility, and removes technical impediments to interconnection and innovation; (3) require the states to set prices for unbundled network service elements at or near TSLRIC; and, (4) make unbundled features and functions available to all interested parties -- IXCs, ESPs, System integrators, and users, as well as CLECs.

Comprehensive national interconnection rules are a fundamental requirement of the Telecommunications Act of 1996 and a prerequisite for the development of local competition. Comprehensive national rules also are necessary for efficient and expeditious implementation of the Act, and are imperative for coordinating the implementation of interconnection mandates with other requirements of the 1996 Act, such as Universal Service. Concerns raised as to whether comprehensive national rules would negatively impact states are well intentioned, but misplaced. Comprehensive rules need not hamper the states' abilities to apply regulations in a manner that accommodates the states' geographic, technical and demographic nuances. Nor would comprehensive

rules undermine innovative solutions advanced by the minority of states that have examined interconnection issues. The Rules should build upon the states successes, and act as a map for states that have not yet facilitated local competition. Interconnection rules are national in scope and it is the Commission's mandate to create national rules that promote competition.

Network unbundling should facilitate the development and widespread availability of competitive local exchange services and prevent ILECs from gaining an unfair competitive advantage in the telecommunications market. Proper unbundling would allow innovative CLECs to create new services and would facilitate the emergence of non-facility based service providers and system integrators as alternative to traditional local exchange services. Network elements should be unbundled into the smallest practicable building blocks. At a minimum, the Commission should (1) unbundle the local loop into its elements; (2) unbundle the individual switch functions to permit CLECs to pick and choose the switch-based functionalities that they need; (3) retain the already unbundled switched transmission services; and (4) unbundle the SS7 transmission services from database dips, and allow access to other databases and directory services.

The Commission should prescribe an aggressive unbundling plan. History teaches that when the FCC has developed an aggressive plan and held the ILECs to its plan, competition flourishes and consumers benefit. Examples of aggressive Commission intervention helping the growth of competition are the Commission's CPE interconnection rules and the its requirement that LECs

provide "equal access" for all long distance carriers. On the other hand, when the Commission leaves the ILECs to their own devises, and does not prescribe an aggressive plan, delay, abuse, and inaction prevail. An obvious example of this condition is ONA.

The pricing of interconnection is as important as any other aspect of the interconnection rules. Ad Hoc strongly urges the Commission to adopt cost-based pricing and not to burden prices for interconnection elements with historical rate of return baggage. Prices for unbundled elements should instead be set at or near TSLRIC.

The Commission should make access to interconnection services and unbundled network elements available to users, IXCs, ESPs, System integrators, and other third parties, not just CLECs. Attempts to impose artificial distinctions between the services obtained by CLECs in the form of unbundled network elements and those obtained by others in the form of Part 69 access and local exchange services are doomed to failure. Artificial price distinctions among identical products are not sustainable over time.

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INTRODUCTION

The members of the Ad Hoc Telecommunications User's Committee ("Committee" or "Ad Hoc") are high-volume business users of telecommunications services and facilities who wish to ensure the continued availability of high quality telecommunications services and facilities at reasonable prices. Currently, the members of the Committee are Advantis, American Airlines, Inc.. American Express Company, Bank of America, EDS Corporation, First Data Resources, Ford Motor Company, Honeywell, Inc., J.C. Penney Company, Inc., Online Computer Library Center (OCLC), Oracle Corporation, Monsanto Co., Proctor & Gamble, United Parcel Service (UPS), USAA, WalMart, and 3M.

The Committee supports the development of competitive markets for telecommunications services wherever possible, because competitive markets

produce cost-based rates and state-of-the-art products and services. Competitive markets produce both the lowest, most cost-efficient prices and the highest quality services. Accordingly, the Committee has consistently supported efforts to develop effective competition in telecom markets and has opposed rules or policies that inhibit competitive entry by new service providers, whether the rules or policies are promulgated by regulatory bodies or incumbent carriers.

The Committee advocates long-term, systemic solutions to telecommunications issues, even when those solutions require members to defer vindication of their short-term self-interest as customers. Thus, for example, Ad Hoc has opposed carrier pricing policies or regulatory requirements that would temporarily lower carrier prices to end users if those price reductions result from anti-competitive cross-subsidies that threaten or delay competitive entry into telecommunications markets in the long run.

The Ad Hoc Committee is participating in this proceeding to advocate interconnection rules and policies that facilitate, rather than delay or prevent, competitive entry into local exchange markets. The current monopoly structure of virtually all local exchange service markets produces higher rates and lower service quality for users of both local exchange, exchange access, and interexchange services. With recent changes in network technologies and user demand, the pro-competitive initiatives of some state utility commissions, and the statutory changes effected by the Telecommunications Act of 1996 ("1996

Act" or the "Act"),[1] the Commission has an historic opportunity to facilitate the development of competition which, if it develops, will protect users from monopoly prices and practices better than even the most effective regulation.

I. NATIONAL INTERCONNECTION REQUIREMENTS

The Commission promulgated this Notice of Proposed Rulemaking ("**NPRM**" or "Notice") to create interconnection rules that will "secure the full benefit of competition for consumers."[2] With this goal in mind, the Commission made a tentative conclusion: *national* interconnection rules foster this goal. The Commission also suggested that it could meet its goal and still preserve broad discretion for the states to resolve state specific issues by limiting the national rules to "issues that are most critical to the successful development of competition."[3] The Commission invited comment on this approach.

Ad Hoc agrees with the Commission's basic premise: comprehensive federal interconnection rules are a fundamental requirement of the 1996 Act and a prerequisite for the development of local competition. For the reasons set forth below, however, the Commission should not limit its focus to the most "critical" issues but should instead enact detailed and comprehensive regulations governing interconnection which state regulatory bodies would then

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1 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

2 NPRM at ¶ 26.

3 NPRM at ¶ 27.

apply to their unique factual circumstances. The interests of ratepayers and customers should not be compromised by jurisdictional timidity and turf wars.

A. Comprehensive Federal Rules Are Necessary to Achieve the Pro-Consumer, Pro-Competitive Goals of the 1996 Act.

Comprehensive federal rules are necessary if the pro-consumer, pro-competitive objectives of the 1996 Act are to be achieved quickly and efficiently. Federal requirements would, and should, capitalize on the uniformity that already characterizes local exchange networks and introduce predictability in pricing structures, both of which are prerequisites to widespread entry by CLECs. A comprehensive federal interconnection regime is also necessary to ensure that implementation of the 1996 Act's interconnection requirements complements, and does not undercut, the results of the other proceedings required by the Act.

1. Uniformity benefits users and facilitates competitive entry

The public switched network developed as a monopoly. The legacy of the network's monopoly origins is a baseline uniformity in local network architectures, equipment, and facility configurations. Comprehensive federal interconnection rules should capitalize on this technological uniformity to create uniform baseline interconnection requirements that would promote entry by new competitors in the local exchange market. A uniform interconnection baseline would encourage new entry by creating an environment hospitable to nationwide business plans and investment. The baseline uniformity created by explicit national rules would eliminate the increased cost of entry associated with

identifying and complying with 50+ different regulatory schemes. The clarity and consistency created by uniform national rules, should facilitate raising capital and deploying sufficient resources to improve the prospects for competition in the local market.

The baseline uniformity introduced by comprehensive federal rules would also create operational efficiencies which translate into better prices and services for users. Rather than being required to enter into multiple service agreements with each vendor to reflect the varying interconnection regulations in each state, users could rely on one comprehensive service agreement per carrier. Instead of receiving multiple bills from each carrier it uses that reflect rate elements which differ for each state in which it receives service, a user could receive a bill using standardized formats from each of its carriers.

The uniformity of a comprehensive federal rate structure would also benefit users who must audit their carrier bills or rely on their billing records to "comparison shop" among carriers. Instead of attempting to evaluate and compare different prices and rate structures mandated by different interconnection rules in different states, users would be able to evaluate carriers' rates and services against a nationwide norm. Users thus will be able to easily identify whether their local carrier is providing adequately priced and invoiced services.

Moreover, with national rather than state requirements, multi-state vendors and corporate users can more efficiently develop nationwide

telecommunications business plans and their own network infrastructure. Modern-day networks are market and technology driven and, by and large, are not designed on a "state" basis. Adapting a national network to support *varying* state interconnection rules can be costly and inefficient for carriers and users alike. For example, a user located in the D.C. metropolitan area might be forced to accommodate three different pricing and rate structures, just to ensure that its network permits employees to place local calls. Thus a uniform and comprehensive set of interconnection requirements will reduce costs for new entrants and end users.

Finally, and perhaps most importantly, a uniform federal resolution of interconnection issues would level the competitive playing field between entrenched local carriers and new entrants. Potential competitors of a monopolist, seeking to obtain services from that monopoly in order to compete against it, are not bargaining from strength. Absent regulatory compulsion, the incumbent monopolist has no incentive to facilitate such competition. As the Commission suggests in paragraph 31 of the NPRM, explicit national rules would create a set of interconnection alternatives which would equalize the negotiating leverage of dominant LECs and new entrants seeking to interconnect through voluntary agreements. National rules would also lessen the risk, real or perceived, that incumbent providers have a "home field advantage." Even the perception of such an advantage, however unjustified given the aggressive

regulation of ILECs by many state utility commissions, can nevertheless chill investment and discourage new entry.

2. *Explicit national rules are required for efficient and expeditious implementation of the Act*

Explicit national rules would expedite the implementation of the Act. Congress has entrusted the Commission with establishing rules that will implement *quickly and effectively* the national telecommunications policy embodied in the 1996 Act.[4] As of this date, most states have not even begun proceedings focused on promoting interconnection and competitive local exchange markets.[5] The initiation and completion of such proceedings in all 50 states (and the District of Columbia) would be time consuming and resource consuming. It has taken New York, a state at the cutting edge of pro-competitive regulation, over 8 years to develop *initial* interconnection policies.[6] The process

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4 NPRM at ¶ 2.

5 NPRM at ¶5.

6 New York initiated a proceeding on the Commission's initiative to review industry interconnection arrangements, open network architecture and comparably efficient interconnection in 1988, Proceeding on Motion of the Commission to Review Telecommunications Industry Interconnection Arrangements, Open Network Architecture, and Comparably Efficient Interconnection, Case 88-C-004, Opinion and Order Concerning Comparably Efficient Interconnection Arrangements, and Instituting Proceeding, (1991). *See also,* Proceeding on Motion of the Commission to Review Regulatory Policies for Segments of the Telecommunications Industry Subject to Competition, Case 29469 ,Opinion and Order Concerning Regulatory Response to Competition, (1989). In 1994, the New York Public Service Commission initiated a proceeding to establish a level playing field for local competition, Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market, Case 94-C-0095, Order Instituting Proceeding, (1994). The New York Public Service Commission issued an order on local carrier interconnection and intercarrier compensation in the fall of 1995, Proceeding to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market, Case 94-C-0095, Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation, (1995). Aspects of that order were challenged and those challenges are currently under consideration.

could very well take longer in states with fewer regulatory resources, or in states whose incumbent carriers face less competition and thus less incentive to cooperate in the re-modeling of their governing regulations.

Detailed national interconnection rules would also be the most efficient means of implementing the pro-competitive policies of the 1996 Act since a single federal proceeding would use user, state, and carrier resources more efficiently. National rules obviate the need for the states and carriers to invest significant time, money, and human resources rehashing the same issues and reinventing the regulatory wheel, especially when the overriding issues associated with interconnection requirements are not jurisdiction-specific. Issues such as "what defines 'technically feasible'," [7] what constitutes 'just and nondiscriminatory collocation'," [8] and "what network elements should be [unbundled]" [9] are decisions that are universal in scope and unaffected by the nuances of individual states or LECs. The enforcement of national rules or their application to the particular circumstances of networks in individual exchanges is properly left to the states.

Explicit national rules are also required to ensure that the enforcement activities committed to state and judicial entities are performed quickly and efficiently. The Commission properly noted the impact of national rules on the

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7 1996 Act 251(c)(2)(A).

8 1996 Act 251(c)(6).

9 1996 Act 251(d)(2).

federal district courts who are charged with reviewing arbitration agreements.[10] Federal district courts are as understaffed and overworked as many regulatory agencies. National rules would enable the courts to make better-informed and quicker decisions while the absence of such rules would lead to varying or inconsistent decisions by the states and the courts.

3. Explicit national rules are necessary to coordinate the resolution of interconnection issues with other proceedings mandated by the Act

A comprehensive national interconnection regime is crucial to the implementation of the telecommunications policies and regulatory scheme mandated by the 1996 Act. Paragraph 31 of the NPRM correctly notes that explicit national rules implementing section 251 would allow the Commission to ensure that the requirements of Section 251 are implemented in context and in conjunction with related proceedings required by the Act. The instant proceeding is only one of a number of interrelated proceedings designed to advance competition by comprehensively overhauling the statutory and regulatory schemes applicable to telecommunications carriers. For example, the Commission's interconnection requirements must be carefully crafted to promote the twin goals of competition and universal service [in conjunction with the Universal Service rulemaking].[11] Similarly, the Commission's regulations

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[10] NPRM at ¶ 26.

[11] *In the Matter of Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96-93, (1996).

implementing § 251 must be consistent with the crucial determinations mandated by Section 271(c)(2)(B) of the Act.[12].

In sum, addressing only the "critical" elements of interconnection will aggravate the problems mentioned above and ignore crucial efficiencies and procedural advantages. Comprehensive federal interconnection requirements are required to accomplish the objectives of the 1996 Act and foster competition in local markets.

B. Appropriate Federal Rules Will Not Eviscerate the States' Role.

Despite the numerous reasons for implementing comprehensive federal interconnection regulations, many of which the NPRM identifies, the Commission raises three primary concerns regarding the impact of national rules on the state's role in establishing interconnection arrangements between ILECs and CLECs.[13] First, the Commission notes that national rules might unduly constrain the ability of states to address unique jurisdictional policy concerns. Second, the Commission questions whether technical, geographic, or demographic conditions in particular states might call for fundamentally different regulatory approaches to ensure uninterrupted delivery of certain services by the ILECs. Third, the Commission observes that the benefits associated with allowing states to experiment with different models will be lost.

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12 1996 Act 271(c)(2)(B) establishing the ILEC Competitive Checklist.

13 NPRM at ¶ 33.

The Commission's concerns in the NPRM are misplaced. Comprehensive rules need not hamper the states' abilities to apply regulations in a manner that accommodates geographic, technical and demographic idiosyncrasies of a given state. Even with comprehensive federal interconnection regulations, states remain in control of the rates, terms, and conditions for local exchange service to users within their states. Thus, for example, while the Commission provides the rate structure and standards for assessing rates, it is the states that determine the actual price of interconnection. Similarly, while the Commission can establish comprehensive standards for points of technically feasible interconnection, it is the states that can determine which particular locations meet the federal criteria.

Moreover, the Act reserves to the states exclusive authority over critical aspects of interconnection. It is the states that review and pass judgment on voluntary interconnection agreements, serve as the vehicle for mediating or arbitrating such agreements, and determine the status of rural LECs pursuant to Section 251(f) of the Act. The states also receive and review Bell Operating Company's statements of generally available terms pursuant to section 252(f). In short, comprehensive federal interconnection rules and standards will not undermine the states' ability to protect public safety and welfare.

Nor do federal interconnection regulations hamper state experimentation or undermine or ignore progress made in the interconnection arena by farsighted states. Ad Hoc strongly endorses the Commission's stated willingness to

incorporate the guidance and empirical data of states that have already considered or implemented competitive interconnection requirements. Because of the work in 19 states, the range of reasonable solutions has already been identified or tested in practice. The Commission should take the best of the breed and incorporate those states' experience into a comprehensive federal regime. If the Commission determines that the approaches taken by more than one state have proven effective in stimulating competitive entry into LEC markets, the Commission should incorporate those solutions into the federal rules. The Commission should stand on the shoulders of the innovative states, taking advantage of the most effective state rules. The Commission should also learn from failed state experiments and avoid interconnection requirements that have proven unworkable. And, where existing state procedures are in keeping with the Commission's rules, the Commission should reiterate that the regulations remain valid and enforceable.

The reality is that most states have yet to consider, much less enact, competitive entry and interconnection rules. Thus, for most states, and their ratepayers, a comprehensive federal regime like that mandated by the 1996 Act will be the vehicle by which competition will be introduced into local markets and will not supplant state action. States with no competitive entry proceedings or regulations would not be foreclosed from experimenting with alternative interconnection requirements, so long as its proposed solutions are consistent with federal regulations More importantly, if a state has yet to initiate a

competitive entry proceeding, the Commission should consider whether the introduction of nationwide competition in local markets and the implementation of the pro-competitive policies of the 1996 Act should be delayed simply to provide an opportunity for such a state to consider alternatives, particularly if a state is likely to agree, by and large, with the federal rules anyway. Nineteen states have already examined essentially identical network technologies and configurations and have identified alternative solutions to virtually identical policy issues. The diminishing return of additional duplicative state proceedings do not justify federal inaction.

In the new world of competitive local telecommunications, there is a key role for both the FCC and the state commissions. Clear and comprehensive interconnection rules will enable state regulatory bodies and ILECs to better serve their constituents -- the end user. Accordingly, Ad Hoc urges the Commission to reject well intentioned but meritless concerns over the loss of state authority and adopt rules that are national and comprehensive in scope.

II. NETWORK ELEMENTS

The Notice tentatively concludes that the Commission should specify the unbundled network elements that ILECs must provide.[14] Given the explicit directive in § 251(d)(2) of the 1996 Act, FCC authority to prescribe a minimum set of unbundled network elements that ILECs must make available to CLECs is

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[14] NPRM at ¶ 77.

unassailable.[15] Ad Hoc urges the Commission to exercise that authority by prescribing a detailed set of unbundled network elements.

A. Policy objectives served by network element unbundling

To serve the pro-competitive goals of the 1996 Act, the Commission's network element unbundling rules should hasten the advent of the information age and a true equal access environment for competing local exchange services. Unbundled network elements and the infrastructure which results must not perpetuate and enlarge the LEC bottlenecks. Network element unbundling should facilitate the development and widespread availability of competitive local exchange services and prevent ILECs from gaining an unfair competitive advantage in the local exchange market, exchange access market, and long distance market.

The Act's directive to unbundle network elements has given the FCC a chance to do "real" Open Network Architecture by pro-actively prescribing unbundled network elements, instead of abdicating that responsibility to the self-interested decisions of the LECs themselves.[16] "Real" unbundling would facilitate competition in the provision of local exchange and exchange access services by:

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15 *But cf.* Part IV, infra

16 Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, Phase I, 5 FCC Rcd 3103 (1990). Amendments of Part 69 of the Commission's Rules Relating to the creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, Report and Order, Order on Reconsideration, and Supplemental Notice of Proposed Rulemaking 6 FCC Rcd 4524 (1991).

- ensuring non-discriminatory access to network elements by the ILECs' competitors who could use unbundled features and functions as ingredients in new or expanded services;
- reducing entry costs for new competitors since they would pay for no more than the discrete network elements they need to provide service; and
- removing technological impediments that the ILECs' current network architecture creates for new and innovative services that may substitute configurations or protocols for some unbundled elements that would be incompatible in a bundled world.

When the Commission reviews the specific unbundling proposals advanced by commenters in this round, it should give more weight to the unbundling proposals of the CLECs and other competing providers of the ILECs' local exchange and information services. Potential customers of the ILECs unbundled network elements have the best information regarding the services they need from ILECs and those they could provide themselves. They should not be required to pay twice for the services they can independently provide because of inordinately bundled rate elements.

The Commission should not define the set of unbundled elements and the optimum level of unbundling on the assumption that unbundled network elements will only be used by a CLEC who's going to offer service identical to

the ILECs. The Commission must also consider (1) the perspective of an innovative CLEC, who might be able to introduce new and innovative services only if it is able to strip away all but a very few key, traditional elements of the ILECs' service and substitute its own network elements for the rest; (2) the interests of users, who seek to expand the supply of competing service providers and increase the diversity of their choices; and (3) the interests of non-facility based service providers or systems integrators who require maximum flexibility to obtain unbundled network elements from the ILECs and recombine those elements with equipment-based or network-based alternatives to traditional local exchange services.

In addition, the § 251 unbundling rules must not discourage new, or inhibit existing, non-traditional competitors and service providers. Users benefit from the widest possible choice of service provider. Therefore, even if the Commission limits the direct availability of unbundled network elements to CLECs,[17] the unbundling rules must preserve maximum flexibility for users, IXCs, enhanced service providers ("ESPs"), and non-facility based system integrators so that they can use the elements as building blocks for competitive services and features. Any limitations on that flexibility should result solely from operational and economic feasibility considerations, not the private business incentives of dominant telephone companies to remain the dominant provider provide interexchange, enhanced, and system integration services.

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[17] Part IV, infra.

All of these factors mitigate in favor of more, rather than less, unbundling of network elements into the smallest practicable building blocks. Accordingly, the Commission should pursue an aggressive unbundling approach to ensure that the network element "ingredients" of the ILECs' monopoly services are available at the most granular level. The more unbundling the Commission requires, the fewer services new providers will be forced to obtain from their ILEC competitors to provide their own services and the greater their opportunities will be to introduce new and innovative services that recombine traditional network elements.

B. History teaches that the Commission must pro-actively prescribe the unbundled network elements

Historically, the ILECs have had strong incentives to resist, and have actively resisted, efforts to open their networks to users, competitors, or new technology-driven applications of network technology. The historical pattern has been that the FCC articulates, and the ILECs endorse, broad statement of pro-entry, pro-competitive principles which then stall for years in FCC rulemakings before any actual implementation of "open" access from a technical and economic perspective.

1. CPE interconnection

When competing equipment providers sought to interconnect with public switched network facilities, the ILECs claimed specious "technical harm" concerns that were eventually resolved by an equipment certification and registration program, but not until *14 years* after the FCC's pro-competitive

policy statements. ILEC resistance to the interconnection of equipment from non-ILEC equipment manufacturers limited consumer choices, required grossly inefficient technical configurations to compensate for the lack of direct access to network facilities, and created formidable economic barriers to competitive entry by CPE manufacturers.

To address these problems, the FCC did not shy away from an aggressive technical intrusion into the ILEC's domain. The Commission developed the equipment certification program, specifying the interconnection standards for such technical matters as network signalling, voltages, radio emissions, isolation, etc. that now appears in Part 68 of the Commission's rules. FCC also required the ILECs to unbundle rate elements, separating CPE rental charges from basic exchange service charges. The Commission didn't allow the scope and technical complexity of equipment interconnection issues to deter it from implementing an unbundling regime, to the ultimate benefit of users and competitors.

2. *Interstate transmission services*

The Commission authorized limited (private line) competition in the interexchange market in 1971 [18] but true equal access to the necessary network

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[18] *Specialized Common Carrier, Establishment of Policies and Procedures for Consideration of Applications to Provide Specialized Common Carrier Services in the Domestic Public Point-to Point Microwave Radio Service,* Dkt. No. 18920, Notice of inquiry to Formulate Policy, Notice of Proposed Rulemaking and Order, 24 FCC 2d 318 (1970); Memorandum Opinion and Order (designating issues for oral argument), 26 FCC 2d 840 (1970); First Report and Order, 29 FCC 2d 870 (1971); recon. denied 31 FCC2d 1106 (1971); aff'd sub nom. Washington Utilities & Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir. 1975) cert. den. 423 US 836, 96 S.Ct. 62. (1975).